

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

DEMETRIUS KELLUM §
v. § CIVIL ACTION NO. 6:16cv1294
DIRECTOR, TDCJ-CID §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Demetrius Kellum, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 challenging the legality of his conviction. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

After review of the pleadings and state court records, the Magistrate Judge issued a Report recommending that the petition be dismissed without prejudice because Kellum failed to exhaust his state remedies, in that his state habeas corpus application was still pending at the time he filed his federal petition. Kellum did not file objections to the Magistrate Judge's Report, but instead filed a motion asking that his petition be dismissed, acknowledging that the Magistrate Judge's recommendation was well taken.

The Court has reviewed the pleadings and the Report of the Magistrate Judge and has determined that this Report is correct. Nonetheless, Kellum's request for voluntary dismissal should be granted. *See Carter v. United States*, 547 F.2d 258, 259 (5th Cir. 1977); *Thomas v. Phillips*, 83 F.App'x 661, 2003 WL 22965565 (5th Cir., December 17, 2003) (citing *Carter*). It is accordingly

ORDERED that the Petitioner's motion to dismiss his habeas corpus petition (docket no. 17) is **GRANTED**. It is further

ORDERED that the above-styled civil action is **DISMISSED WITHOUT PREJUDICE** on the motion of the Petitioner. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby **DENIED**.

So **ORDERED** and **SIGNED** this **24** day of **August, 2017**.



Ron Clark, United States District Judge